

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

United States of America, :
 :
 Plaintiff, :
 :
 v. : Case No. 2:04-cr-0006(1)
 :
 Thierno Mamadore Barry, : JUDGE SARGUS
 :
 Defendant. :

DETENTION ORDER

The above defendant appeared before the Court on July 11, 2005 for a detention hearing. Previously, the defendant, who is charged with a violation of probation, waived his preliminary probation revocation hearing. The Court ordered him detained without bond pending further proceedings. The purpose of this Order is to set forth in writing the reasons for that decision.

The petition charging defendant with a violation of his probation indicated that as a term of his probation, he was to reside for two months under home confinement. Although he began home confinement, as a result of alleged assault on his spouse, he became unwelcome at the residence where he was to serve that term of home confinement. His wife has since obtained a protection order against him, preventing his return to that residence. It also appears that the defendant, although he was required to work regularly at a lawful occupation, falsely represented to the Probation Officer that he had filed job applications as an effort to obtain employment.

After the initial petition was filed, the Probation Office investigated whether there was an alternative residence where the defendant could complete his home confinement. One of his cousins, a Mr. Bah, had initially volunteered his residence as a

suitable location, although he did not have a telephone in the residence. Mr. Hunt, the Probation Officer, conducted an investigation of the suitability of the residence and determined that Mr. Bah was moving on August 1, 2005, but he was in the process of relocating, and that he would only permit the defendant to stay there a short period of time. As a result, the Probation Officer concluded that this placement was unacceptable. No specific alternate living arrangement was offered.

When there is probable cause to believe that the defendant has violated the terms and conditions of probation, it becomes that defendant's burden to demonstrate by clear and convincing evidence that he is neither a risk of flight nor a danger to the community. Here, the defendant was unable to make that showing. Not only did he create circumstances under which he could no longer complete his sentence of home confinement, his doing so apparently involved violence against his spouse. Further, he did not demonstrate that he had a suitable place to reside either as a place of residence while a probation revocation hearing was being conducted or as a place where he could continue to serve the home confinement ordered as part of his probation. Under those circumstances, the Court concluded that he should be detained without bond pending a final probation revocation hearing.

The defendant was advised of his right to seek review of this Order by a United States District Judge pursuant to 18 U.S.C. §3145(b).

/s/ Terence P. Kemp
United States Magistrate Judge